

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ADJUSTACAM LLC
Plaintiff

v.

AMAZON.COM, INC., *et al.*
Defendants

Case No. 6:10-cv-329-LED

JURY

NOTICE OF SUPPLEMENTAL AUTHORITY

For the Court's consideration in deciding the pending Motion to Sever and Stay Claims as to Reseller Defendants Based on the Customer Suit Exception [Dkt. No. 370], the moving Defendants¹ file this Notice of Supplemental Authority and attach the recently issued order in *Itex, Inc. v. Westex, Inc. et al*, 1:05-cv-06110, (N.D. Ill. Mar. 9, 2011) [Exh. A].

In *Itex*, as in this case, the plaintiff argued that downstream sales data were relevant to the plaintiff's theory of damages. *Itex* at 4; Opposition at 9-10 [Dkt. No. 378]. However, the court held that downstream sales data are irrelevant to any theory of damages where the value of accused products is captured in upstream sales data from suppliers. *See Itex* at 7-11. This is consistent with Federal Circuit authority on the issue. *See Mitutoyo Corp. v. Central Purchasing, LLC*, 499 F.3d 1284, 1292 (Fed. Cir. 2007) [Exh. B] (reversing award where district court included both a manufacturer's sales data and sales data from the manufacturer's customer in determining a reasonable royalty).

¹ Amazon.com, Inc., Auditek Corporation, Blue Microphones, LLC, Baltic Latvian Universal Electronics, LLC D/B/A Blue Microphones, LLC D/B/A Blue Microphone, CDW Corporation F/K/A CDW Computer Centers, Inc., CDW, Inc., Compusa.com, Inc., Cobra Digital, LLC, Creative Labs, Inc., Dell, Inc., Digital Innovations, LLC, Fry's Electronics Inc., Gear Head, LLC, Hewlett-Packard Company, Jwin Electronics Corporation, KMart Corporation, Lifeworks Technology Group, LLC, Macally Peripherals, Inc. D/B/A Macally U.S.A., Mace Group, Inc., Micro Electronics, Inc. DBA Micro Center, New Compusa Corporation, Newegg, Inc., Newegg.com, Inc., Office Depot, Inc., Overstock.com, Inc., Phoebe Micro Inc., Rosewill Inc., Sears Brands, LLC, Sears Holdings Corporation D/B/A Sears, Sakar International, Inc., Systemax, Inc. D/B/A Compusa, Target Corp., Tigerdirect, Inc., Wal-Mart Stores, Inc., Sears, Roebuck and Company, Best Buy Co. Inc., Best Buy Stores, LP, BestBuy.com, LLC, Kohls Corporation D/B/A Kohl's, and Kohl's Illinois, Inc.

DATED: March 17, 2011

By: /s/ Steven R. Daniels

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INC., AND OFFICE DEPOT, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this notice was served on all counsel of record who have consented to electronic service as this district requires. Local Rule CV-5(a)(3)(A).

/s/ Steven R. Daniels